



Criminal Defense Attorneys of Michigan

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May 23, 2011

The Honorable Rick Jones
Chair, Senate Judiciary Committee
Post Office Box 30036
915 Farnum Building
Lansing, Michigan 48909

re: *SB 387-388*

Dear Chair Jones:

I am writing, on behalf of the Rules and Laws Committee of the Criminal Defense Attorneys of Michigan in opposition to SB 387-388. This bill, if enacted, would impose a mandatory minimum two-year prison sentence for anyone convicted of "fleeing and eluding," regardless of whether they are convicted of the least serious such offense (F&E 4th Degree), or the most serious (F&E 1st Degree). CDAM believes that these offenses involve facts and circumstances too varied to permit a one-size-fits-all penalty, especially one that *requires* incarceration. Furthermore, a sentencing judge has the ability to tailor his or her sentence to those varying facts and circumstances, including the ability to order imprisonment in appropriate cases.

Proponents of the bills say that, without some kind of mandatory incarceration penalty, defendants will continue to drive off when signaled to stop, which will perpetuate high-speed chases involving drunk drivers, endangering the police and lay persons in the vicinity when such chases ensue. While this problem does exist (and currently has much higher penalties attached to it), the bills attempt to resolve this problem with a too-broad stroke. Many such offenses do not involve high-speed chases at all, but rather, for example, a freaked-out kid who doesn't know what to do and simply continues on his or her way for a distance while figuring that out. Or an alcohol-addled adult who is a couple blocks from home and who thinks that if s/he only can get to their driveway it will make the situation more manageable. Or someone who is so impaired that s/he simply doesn't process the police signal for awhile. In addition, sometimes people get charged when they don't pull over immediately because they fear for their safety or they think a better spot is up ahead--it may be too dark, they might think traffic is too heavy right there, etc.

Defense attorneys can relate to you many such stories. Last year, I represented a young man on probation for an alcohol-related offense. Late one night on the side of a rural dirt road, he was helping a buddy with a disabled truck. He noticed a sheriff's deputy coming from a distance away, and he got extremely anxious because he had been drinking and he knew the officer would stop at the disabled vehicle. He hopped into his truck and took off to his home a quarter mile away, disregarding the officer's activation of his top lights. This was not a high-speed chase and no one was in any danger, and the officer quite easily located my client at his home, but my client nonetheless was guilty of fleeing and eluding. This is not the sort of person whose actions deserve two years' imprisonment.

Another man whom I represented a few years back was somewhat intoxicated when he was signaled to stop. In his impaired state, he thought it would be better if he drove the remaining few blocks to his house. He did so (observing the speed limit), at which time parked his car in his garage. My client's actions were foolish, and in the long run hurt no one but himself. This is not the sort of person whose actions deserve two years' imprisonment (drunk driving penalties aside).

Another local attorney I know represented a woman driving by herself through another rural township, again late at night. Top lights flashed behind her, signaling her to pull over, but she was afraid to do so. The road was unlit and unfamiliar to her. Instead, she drove up the road until she found a lit gas station, where she pulled over. She was charged with fleeing and eluding. Again, this is not the sort of person whose actions deserve two years' imprisonment.

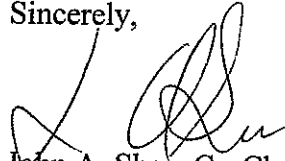
To be sure, there are persons who commit this offense in a flagrant and dangerous way. There are persons who intentionally and deliberately engage law enforcement in high-speed chases and are a menace as a result. However, *the statute already provides degrees of severity*, and sentencing judges have ample discretion even with a F&E 4th Degree conviction to impose incarceration in such circumstances. *It is those persons for whom incarceration should be reserved, not everyone convicted of this offense.*

A final point. These bills seem to reflect the rationale that a mandatory incarceration penalty will somehow deter the typical driver from fleeing. However, studies demonstrate that it is not the severity of punishment that provides the greatest deterrent to criminal behavior; one need look no further than other mandatory minimum laws *repealed* all over the country because they had the *opposite* of their intended effect. It seems unlikely that such a driver, who likely will be impaired, or scared, or perhaps simply over-thinking the situation, is going to make a decision whether to immediately pull over based on

the threat of a 2-year minimum sentence (*if* such a driver even is knowledgeable of that penalty).

Again, CDAM urges that SB 387-388 be rejected. While the desire to protect law enforcement and general members of the public from dangerous high-speed chases is laudable, this policy response will be too broad in its impact and end up over-punishing many. Thank you for your kind consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'John A. Shea', is written over the printed name.

John A. Shea, Co-Chair
Rules and Laws Committee
Criminal Defense Attorneys of Michigan

